SUPREME COURT OF THE UNITED STATES.

No. 58.

WILLIAM H. FRESH, PLAINTIFF IN ERROR,

vs.

RIAH GILSON, CHRISTOPHER MIDLER AND JAMES FRESH.

IN ERROR TO THE CIRCUIT COURT U. S., FOR WASHINTON, D. C.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Copy of appeal bond	3	2
Style of court	5	2
Parties	5	3
Affidavit of plaintiff	6	3
Warrant to clerk	7	3
Attachment	8	4
Capias ad respondendum	10	5
Short note	11	6
Appearance of plaintiff, and marshal's return	12	7
Appearance of defendant—special bail given and attachment dissolved	13	7
Non assumpsit—issue joined, and venire facias	14	8
Verdict and judgment	17	10
Plaintiff's 1st bill of exceptions	17	10
Do. 2d do.	20	11
Do. 3d do.	21	12
Do. 4th do.	22	12
Do. 5th do.	22	13
Contract between Chesapeake and Ohio Canal Company and defendants	25	14
Specification for culverts on Chesapeake and Ohio Canal	31	17
Proposals for ditto	35	19
Final estimate	37	20
Contract between plaintiff and defendants	39	21
Barrett's contract	40	22
Letter from plaintiff to defendant's agent	42	23
Exhibit C, and vouchers	43	23
Vouchers from 1 to 7, referred to by W. A. Wells	56	32
Due bills referred to at page 20	57	33
Return to writ of error	59	34
Clerk's certificate and seal	59	34

S. D. Langtree, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the District of Columbia, for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court, before you, of some of you, between William H. Fresh, plaintiff, and Riah Gilson, Christopher Midler, and James Fresh, defendants, a manifest error hath happened, to the great damage of the said William H. Fresh, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in said Supreme Court to be then and there had and held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 7th day of October, 1839.

W. BRENT, *Clk.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Riah Gilson, Christopher Midler, and James Fresh, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein William H. Fresh, is plaintiff in error, and you are defendant in error, to show cause if any there be, why judgment rendered against the said William H. Fresh, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia, this 7th day of October, 1839.

Service acknowledged,

JOS. H. BRADLEY,
Attorney for Gilson and Midler.

[REC. LVIII. J. T. 1841.]—1

Know all men by these presents, that we, William H. Fresh, William L. Brent, and Robert J. Brent, are held and firmly bound unto Riah Gilson, Christopher Midler, James Fresh, and John Noonan, in the full and just sum of three hundred dollars, current money, to be paid to the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, their certain attorney, executors, or administrators, to which payment well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 7th day of October, 1839.

Whereas, lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said William H. Fresh, was plaintiff, and the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, were defendants, judgment was rendered against the said plaintiff, and he having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, on the Monday of January next.

Now the condition of the above obligation is such, that if the said William H. Fresh, shall prosecute his said writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

WM. L. BRENT, [L. S.]
ROBERT J. BRENT, [L. S.]

Signed, sealed, and delivered in the presence of

Approved, W. CRANCH.
Copy, Test:
W. BRENT, *Clerk.*

Style of Court.

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-sixth day of the same month, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-third—Present: the honorable William Cranch, chief judge, Buckner Thruston, and James S. Morsell, assistant judges; Alexander Hunter, Esq., marshal; William Brent, clerk—

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

WILLIAM H. FRESH
against
RIAH GILSON and others.

Be it remembered, that on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and thirty-five, Henry Wertz, Esq., a justice of the peace in and for the county and district aforesaid, pursuant to an act of Assembly in such case made and provided, sent to the clerk of the circuit court here, a certain affidavit taken before him, with a certain account thereto annexed, together with the warrant of him, the said Henry Wertz, Esq., under his hand and seal; and which said affidavit, account, and warrant are in the words and of the tenor following, that is to say:

Affidavit.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Be it remembered, that on the 25th day of March, in the year of our Lord one thousand eight hundred and thirty-five, before me, the subscriber, a justice of the peace of the District of Columbia, in and for the county aforesaid, personally appeared William H. Fresh, a citizen of the State of Maryland, and made oath on the Holy Evangely of Almighty God, that Riah Gilson, Christopher Midler, James Fresh, and John Noonan, trading under the name of Riah Gilson & Co., are bona fide and justly indebted unto him, the said William H. Fresh, in the sum of thirteen hundred and forty-three dollars and one cent, over and above all discounts; and at the same time the said William H. Fresh produced to me the account on which and by which the said Riah Gilson & Co. are so indebted, which is hereto annexed; and the said William H. Fresh did also make oath, that he doth know that the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, are not citizens of the District of Columbia, and do not reside therein.

Sworn to, before me, this 25th day of March, 1835.

HENRY WERTZ,
Justice of the Peace.

Warrant to the Clerk.

To the Clerk of the Circuit Court for Washington County, in the District of Columbia.

Mr. BRENT: You are hereby required, on the receipt of this warrant, and the above oath of Wm. H. Fresh, and annexed voucher of accounts, on which the same is granted, to issue an attachment against the lands, tenements, goods, chattels, rights, and credits of the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, trading under the name of Riah Gilson and Company, to

answer unto the said William H. Fresh the above mentioned sum of thirteen hundred dollars and one cent, current money, and the costs of this attachment, according to the acts of Assembly of Maryland in force in the District of Columbia, in such case made and provided, and the laws of the United States; and this warrant shall be your sufficient authority therefor.

Given under my hand and seal, this 25th day of March, in
[L. S.] the year of our Lord one thousand eight hundred and thirty-five.

HENRY WERTZ,
Justice of the Peace.

Account, on which the above Warrant was granted.

1833.	Riah Gilson & Co. to Wm. H. Fresh	Dr.
Dec. 24.	To 541 perches masonry, at $4 - -	$2,164 00
	1,351 cubic yards excavation, at $18 -	243 18
	100 square yards paveing, at 30 c. -	30 05
	236 bus. cement, not rec'd on order, a 21 c.	48 56
		$2,485 74
Cr.	By cash, &c., at sundries - - -	1,142 73
	Due - -	$1,343 01

And thereupon, in pursuance of said warrant, and by virtue of the act of Assembly aforesaid, the clerk of the circuit here issued forth out of said court, at the instance of the said plaintiff, by Brent & Brent, esquires, his attorney, the United States writ of attachment, directed to the marshal of the district aforesaid, in the words and of the tenor following, to wit:

Attachment.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

Whereas Henry Wertz, Esq., a justice of the peace for Washington county, by his warrant, under his hand and seal, dated the 25th day of March, eighteen hundred aud thirty-five, did authorize and direct the clerk of the circuit court of the Disirict of Columbia for the county of Washington, to issue an attachment against the lands, tenements, goods, chattles, rights, and credits of Riah Gilson, Christopher Midler, James Fresh, and John Noonan, trading under the name of Riah Gilson and Company, lying and being in the county of Washington aforesaid, to satisfy unto William H. Fresh the sum of thirteen hundred dollars and one cent, and the costs of this attachment, which warrant, together with the proofs on which the same was granted, are filed of record in the office of said circuit court:

Therefore, you are hereby commanded to attach, seize, take, and safe keep the lands, tenements, goods, chattels, rights, and credits of the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, which shall be found in the county of Washington aforesaid, to the value of as well the said sum of thirteen hundred dollars and one cent, as the sum of one hundred dollars for the costs and charges which may or shall accrue in the premises; and when you have the same so attached, or any part thereof, the same in your custody safe keep, so that you have the same before the circuit court of said district, to be held for the said county, at the city of Washington, on the 4th Monday of November next, then and there to be condemned to and for the use of the said William H. Fresh; unless they, the said Riah Gilson, Christopher Midler, James Fresh, and John Noonan, by themselves or their attorney, shall appear and answer unto the said William H. Fresh, in a plea of trespass on the case, and so forth, according to law.

You are likewise commanded, by good and lawful men of the said county of Washington, to make known to each person or persons in whose hands or possession the said goods, chattles, and credits so attached are, if to him or them it shall seem meet, to be and appear, on the day and at the place aforesaid, before the said circuit court, to show cause why such goods, chattles, and credits, so attached as aforesaid, should not be condemned, and execution thereof had and made, as in other cases of recoveries and judgments given in courts of record; and that you make appear unto the said court, at the day and place aforesaid, in what manner yon shall execute this writ; and have you then and there this writ.

Witness the honorable William Cranch, chief judge of our said court the 1st day of April, 1835.

Issued the 2d day of April, 1835.

B & B. W. BRENT, *Clerk.*

Capias ad Respondendum.

And the said plaintiff, by his attorney aforesaid, did then and there impetrate and set forth, out of the circuit court here, the United States writ of *capias ad respondendum*, directed to the marshal of the district aforesaid, in manner and form and of the tenor following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

We command you that you take Riah Gilson, Christopher Midler, James Fresh, and John Noonan, trading under the firm of Riah Gilson and Company, late of Washington county, if they shall be found within the county of Washington, in your said district, and them safely keep, so that you have their bodies before the cir-

cuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of November, to answer unto William H. Fresh in a plea of trespass on the case, and so forth. Hereof fail not, at your peril; and have you then and there this writ.

Witness W. Cranch, Esq., chief judge of our said court, at the city of Washington, the 1st day of April, Anno Domini one thousand eight hundred and thirty-five.

Issued the 2d day of April, 1835.

B. & B. W. BRENT, *Clerk.*

Short Note.

On the day of impetrating and serving forth of which said writs of attachment and *capias ad respondendum*, as aforesaid, the said plaintiff, by his attorney aforesaid, declared against the said defendants in the plea aforesaid, in manner and form following, to wit:

WM. H. FRESH
vs.
RIAH GILSON & Co. } Short Note.

The cause of action in this case is upon an account filed, whereon the defendants, Riah Gilson, Christopher Midler, James Fresh, and John Noonan, trading under the name of Riah Gilson and Company, to wit, at the county aforesaid, on the twenty-fourth day of December, in the year 1833, were indebted to the plaintiff in the sum of thirteen hundred and forty-three dollars and one cent, for work and labour done, and goods, wares, and merchandize furnished by the plaintiff to the defendants, at their special instance and request; and being so indebted, the said defendants, at the county aforesaid, on the day and year aforesaid, undertook and faithfully promised the plaintiff to pay him the said sum of money, whenever afterwards they should be required to do so. Which sum, or any part thereof, the defendants have not paid, although often thereto required, but wholly refuse to pay the same or any part thereof, to wit, at the county aforesaid, on &c. And therefore the plaintiff hath damage two thousand dollars, and therefore he brings suit, &c.

BRENT & BRENT,
For Plaintiff.

A copy of which said short note was made and sent, with the writs aforesaid, to the marshal of the district aforesaid, thereon endorsed "that the same was to be set up at the court house door of the said county."

November Term, 1835.

Appearance of Plaintiff, and Marshal's Return of Attachment.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-five, and the day of the return of the said foregoing writs, comes into the circuit court here, the said plaintiff, by his attorney aforesaid; and the marshal of the district aforesaid, to whom the writ first aforesaid was in form aforesaid directed, makes return of the said writ to the court here, thereon endorsed, that is to say:

"Attached credits in the Chesapeake and Ohio Canal Company, and summoned George C. Washington, president, Walter Smith, Phineas Janny, J. J. Abert, and William Gunton, as garnishers, in presence of Wm. Easly, and Wm. E. Howard. April 9th, 1835.
ALEX. HUNTER, *Marshal.*"

Capias ad Respondendum.

And the marshal aforesaid, to whom the writ of capias ad respondendum was in form aforesaid directed, and to whom the said copy of the aforesaid short note was in manner aforesaid sent, makes return of the writ aforesaid, to the court here, thereon endorsed, to wit: *to wit:* "non est, and short note set up at court house door."
"ALEXR. HUNTER, *Marshal.*"

Appearance of Defendants.

Whereupon the said defendants being called, come into the circuit court here, by Joseph H. Bradley, Esq., their attorney, and pray the court here, that they may be admitted to appear to the original action, according to the act of Assembly aforesaid; which is by the court here granted, upon their giving special bail to the said original action.

Special Bail given and Attachment Dissolved.

Whereupon a certain William A. Bradley, present here in court in his proper person, with the consent of the said plaintiff, by his attorney aforesaid, undertakes for the said defendants, that in case the aforesaid plaintiff shall recover judgment against the said defendants, in the plea aforesaid, or that the said defendants shall be therein legally convict, that then the said defendants shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid, in satisfaction thereof, or that he the said William A. Bradley, will do the same for them; thereupon the said attachment, is by the court here dissolved.

Rule, Plea, and Imparlance to March term, 1836.

And the said plaintiff, by his attorney aforesaid, prays that the said defendants to the declaration aforesaid may answer, or that judgment by the court here be entered against them in default thereof; and the said defendants by their attorney aforesaid, defend the force and injury when and so forth, and pray leave of the court here to imparle until the fourth Monday of March next, and there to answer to the declaration aforesaid, of the said plaintiff in the plea aforesaid, and to them it is granted, and the same day is given to the aforesaid plaintiff also; at which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-six, to which said day the said defendants had leave to imparle and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid.

Appearance of Parties.

Comes again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid, and the said defendants, by their attorney aforesaid as before, defend the wrong and injury, when, &c.

Non Assumsit and Issue Joined—Venire Facias to Nov. Term 1836.

And say, that they did not assume upon themselves in manner and form, as the aforesaid plaintiff above against them hath declared, and of this they put themselves upon the country; and the said plaintiff by his attorney aforesaid, in like manner and so forth; therefore let a jury thereon appear before the court here, on the fourth Monday of November next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., and the same day is given to the aforesaid parties then and there and so forth.

Appearance and Continuance to March Term, 1837.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-six, comes again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid, thereupon further process, of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the fourth Monday of March next.

Appearance and Continuance to November term, 1837.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-seven, to which said day the said cause was continued, comes again into the circuit court here, as well this said plaintiff, by his attorney aforesaid, as the said

defendants by their attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of November next.

November Term 1837, Appearance and Continuance.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-seven, to which said day the said cause was continued, comes again into the circuit court here as well the said plaintiff by his attorney aforesaid, as the said defendants, by their attorney aforesaid; thereupon further process of, and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of March next.

March Term 1838, and Continuance.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-eight, to which said day the said cause was continued, comes again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of November next.

November Term 1838.

And now at this day, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-eight, to which said day the said cause was continued, comes again into the said circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid; whereupon for trying the issue aforesaid, it is ordered by the court here, that twenty persons be drawn by ballot, from the pannel of petit jurors, returned by the marshal to the court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the lists, thereupon, the remaining twelve persons, being called, come to wit:

Jury.

1 William Easly, 2 John Queen, 3 George Crandell, 4 John B. Furguson, 5 Vincent King, 6 Samuel Smoot, 7 Richard Butt, 8 John Pickrell, 9 Lewis Smith, 10 Joseph Smoot, 11 George W. Phillips, 12 John Mount.

Verdict—Judgment on Verdict.

Who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendants, did not undertake and promise in manner and form as the said plaintiff within against them hath complained; therefore it is considered by the court here, that the said plaintiff take nothing by his writ and declaration aforesaid, but that he be in mercy, &c., for his false clamour, and that the said defendants go thereof without day, &c.; and it is also considered by the court, that the said defendants recover against the said plaintiff the sum of ——— dollars and —— cents, by the court here unto them adjudged, for their costs and charges by them, about their defence in this behalf laid out and expended and that they have thereof their executing, &c.

Test: W. BRENT, *Clerk.*

Memorandum.

Memorandum. Before the jurors aforesaid withdrew from the bar of the court here, the said plaintiff, by his attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Plaintiff's first Bill of Exceptions.

At the trial of this cause the plaintiff having offered in evidence, without objection, the contract between the defendants and the Chesapeake and Ohio Canal Company, and the estimate (marked A and B) hereunto annexed, (copied in pages 25 and 38 inclusive,) also offered evidence to prove that by the contract between himself and the defendants, dated the 30th November, 1832, (copied in pages 39 and 40,) the plaintiff was entitled to receive from the defendants, upon their receiving certificate of approval of work and measurement of excavation, stone, and extra work, in the pit and culvert numbered 116, on section 150 of the Chesapeake and Ohio Canal, the sum of eighteen cents for each and every cubic yard of excavation, and for mason and extra work the contract price allowed the defendants by the Chesapeake and Ohio Canal Company, with whom the defendants had contracted for the said work as aforesaid; and having offered evidence to prove that the plaintiff had excavated on said work 1,326 cubic yards of excavation; and that 541 perches masonry, 100 square yards paveing, and 25 cubic yards of rock, were done on said work, for which the defendants, at their contract price, received, from the Chesapeake and Ohio Canal Company, for the masonry $4 per perch, for the paveing 30 cents per square yard, and for the rock 50 cents per cubic yard, amounting, in the whole, to the sum of $2,445 18, which the plaintiff claimed of the defendants, and having proved his contract with Barret, (copied in page 40;) the defendants then offered evidence tending to prove that the plaintiff had neglected the work on said section some time in the summer

of 1833; and Christopher Midler, one of the defendants, had declared to a witness, out of the presence of the plaintiff, that he had taken the contract from the plaintiff, and that the plaintiff was not on the work again until it was completed; and having offered in evidence that the defendants had continued an account on their books against the plaintiff amounting to $1,369 36, which was shewn to the plaintiff on the 21st December, 1833, by the clerk and agent of the defendants; and that the work on the said culvert was completed on the 21st December, 1833, at which time the whole charges on the books of the defendants against the plaintiff was $1,369 36; which account the plaintiff received, only objecting to the amount of cement therein charged, which account is here inserted (copied in page 43;) the plaintiff then offered evidence to prove that he was frequently on the work during the summer and fall of 1833, and was there at the completion of the work; that in 1835 John McBarniclo, a witness in this cause, warranted Gilson, one of the defendants, for blacksmith's bill he held on account of work done late in the fall of 1833, by the order of Midler, one of the defendants, for said culvert; and Gilson declared the defendants had nothing to do with the creditors of the work, but that they must look to the plaintiff; and also, that the plaintiff wrote the letter to the agent and clerk of the defendants, dated 25th December, 1833, (copied in page 42;) the defendants then offered in evidence a number of orders and due bills numbered from 1 to 7, dated before the 21st December, 1833, (the day on which the plaintiff received the account C,) and accompanied their offer of said orders with proof to show a payment by them of the same on the 29th of April, 1835, but admitted that said orders were never shewn to said plaintiff or expressly recognized by him, (see orders copied at page 56;) to the admissibility of which evidence the plaintiff, by his counsel, objected, but the court admitted the same to go in evidence to the jury, to which the plaintiff excepts, and this his bill of exceptions is signed and enrolled this 12th of December, 1838.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

Second Bill of Exceptions.

Plaintiff's second Bill of Exceptions.

In addition to the evidence contained in the first bill of exceptions the defendants offered evidence to prove that the due bills and orders enclosed in the paper signed (J. H. B. and R. J. B.) amounting to $273 50, (copied in pages 57, 8,) were signed by Elijah Barret, except the one signed Ambrose, and were presented to a competent witness, the clerk and agent of the defendants, by Midler, one of the defendants, after 21st December, 1833, but were never shewn to the plaintiff or acknowledged by him; to the admissibility of which evidence the plaintiff, by his counsel, ob-

jected, but the court overruled the objection and permitted the evidence to go to the jury; to which decision the plaintiff excepts, and prays that his bill of exceptions may be signed, sealed, and enrolled, which is done this 12th December, 1838.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

Third Bill of Exceptions.

Plaintiff's third Bill of Exceptions.

In addition to the evidence contained in the aforegoing bills of exceptions, the defendants offered to prove, by a competent witness, that on the trial of the case of Hammond against Gilson and Midler, two of the present defendants, at November term, 1836, of this court, it was proved, by testimony then given in said cause, that the cause of action, on which said suit was brought by said Hammond against Gilson and Midler, was for work done, and boarding hands employed on culvert 116, section 150, of the Chesapeake and Ohio Canal Company, (being the same culvert mentioned in the contract exhibited in the first bill of exceptions;) and the defendants accompanied said offered evidence with an offer to show payment and satisfaction of said Hammond's account and suit aforesaid, the defendants in this action; to the admissibility of which testimony the plaintiff objects, on the ground that he was a stranger to said suit, and cannot be in any way affected by what was then proved by witnesses whom he had no opportunity to cross-examine; but the court admitted the evidence and allowed the same to go to the jury; to which decision the plaintiff excepts, and prays his bill of exceptions to be signed, sealed, and ordered to be enrolled, which is done this 13th day of December, 1838.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

Plaintiff's fourth Bill of Exceptions.

Plaintiff's fourth Bill of Exceptions.

In addition to the evidence contained in the aforegoing bills of exceptions, the defendants offered to prove that Riah Gilson and Christopher Midler, two of the defendants, had superintended the work on the culvert No. 116, section 150, aforesaid, and that the defendants' superintendance was worth $150; to the admissibility of this as evidence the plaintiff objected, but the court admitted the evidence to go to the jury; to which the plaintiff excepts, and prays his bill of exceptions to be signed, sealed, and delivered, which is done accordingly this 12th December, 1838.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

Plaintiff's fifth Bill of Exceptions.

Plaintiff's fifth Bill of Exceptions. 1st Prayer—2d Prayer.

The plaintiff having offered and given in evidence the contract between the Chesapeake and Ohio Canal Company and the defendants, and the contract under the seals of the plaintiff and Riah Gilson, one of the defendants, (copied in pages 39 and 40;) and the defendants having offered in evidence their account C, (copied at page 43,) with the vouchers therefor numbered from 1 to 34, (copied in pages 45 to 55,) charging the plaintiff with cement delivered to him on account of said culvert 116; and having further offered proof that the work on said culvert was not completed until after the 1st of August, 1833; the plaintiff then offered in evidence the final estimate contained in the first bill of exceptions, to show that the work on said culvert was completed and accepted by the Chesapeake and Ohio Canal Company after the first of August, 1833, and having also offered evidence to prove that the said work was carried on and not completed until some where about the 21st December, 1833. The defendants further, to maintain the issue on their part joined, offered evidence by John Barneclo, a competent witness, to shew that in the month of July, 1833, some of the hands employed by William H. Fresh, on the said culvert 116, boarded with Jacob Hammond, in a preceding bill of exceptions named; that the said Jacob Hammond refused to give credit to the said William H. Fresh any longer; that the said witness was present at an interview between the said Jacob Hammond and Christopher Midler, one of the defendants, in which the said Hammond told the said Midler that he would not board the said hands any longer on account of the said Fresh, and that Midler then undertook to pay the board of said hands from that time, and then employed the said hands on the said culvert, and they continued to board with said Hammond until the conclusion of the work; the said witness further testified that from and after that time the said William H. Fresh had no hands employed in the said work; that Lorenzo Ambrose, claiming to act as superintendent for said Fresh, remained on the said work for some time after Midler had declared the work abandoned, and was carrying it on at the expense of the defendants; and that Midler told him (Ambrose) that he had no objection to his remaining there, but he would not recognize him in any character, as he was carrying on the work on his own account. The defendants then prayed the court to instruct the jury that "if, from the evidence, the jury shall find that there was an agreement, under seal, between the said plaintiff and the defendants, for the execution of the work and labor for which this action is brought, the plaintiff is not entitled to recover in this action;" and further, that "if, from the evidence, the jury shall find that the said plaintiff performed the work and labor for which this action is brought, under a sealed agreement, between the said plaintiff and Riah Gilson, then the plaintiff, is not entitled to recover in

this action;" to the granting of which two instructions, unless qualified, the plaintiff objected, but the court overruled the objection, and gave the said instructions as prayed; to which the plaintiff excepts, and prays this his bill of exceptions to be signed, sealed, and ordered to be enrolled, which is done this 13th of December, 1838.

W. CRANCH, [L. S.]
JAMES S. MORSELL, [L. S.]

Contract between Chesapeake and Ohio Canal Company and Defendants, marked A.

Contract between Chesapeake and Ohio Canal *Canal* Company and Defendants, referred to in 1st Bill of Exceptions, page 17, and marked A.

Contract for Culvert No. 116.

Articles of agreement entered into this twenty-third day of August, in the year 1832, between Ryal Gilson, John Noonan, Christopher Midler, and James Fresh, of the State of ——— of the first part, and the Chesapeake and Ohio Canal Company, by the president thereof, of the second part.

Witnesseth, that the said Gilson, Noonan, Midler and Fresh, promise and agree in conformity with the annexed specification, and the plan of culverts exhibited by the canal company at the time of making this agreement, and with such changes or alterations thereof as may be hereafter adopted, either by an engineer of the company, or by the president and directors thereof, to construct in a substantial and workmanlike manner, on the 150th section Chesapeake and Ohio Canal, culvert No. 116, of 10 feet span, and to furnish all the materials which may be necessary or proper therefor, according to the annexed specification, and of such quality as an engineer of the company shall approve.

Some competent engineer in the employment of the president and directors of the Chesapeake and Ohio Canal Company, shall from time to time, not more frequently than once a month, estimate the quantity and value of each species of work done pursuant to this contract, at the prices contained in the annexed proposal, and also of any extra work done in consequence of any alteration of the plan of the culvert or of the materials required for its construction, when such alterations shall have been made under the authority of a written order, and shall have caused an increased expense to the contractor; and where any alteration of the plan or materials shall have caused a saveing of expense to the contractor, the engineer shall make a reasonable deduction from the estimate so made, for such saveing of expense; and he shall determine every question necessary for the payment of the monthly as well as the final estimates. And it is mutually agreed and understood between the

contracting parties, that any estimate made as aforesaid, shall be final and conclusive, unless objected to before payment thereof, and within twenty days after it shall have been returned to the president and directors; in which case, notice must be given by the party objecting, to the other party, in writing, and any estimate so objected to, shall thereupon be referred by the president and directors, to the acting resident engineer, or the engineer having the superintendence of that portion of the canal comprehending the aforesaid culvert, or in case of his death, resignation, absence, or inability, to such one of the resident or assistant engineers as the president of the company may depute to fill his place, and the decision of such engineer thereupon, whether he shall have previously approved and signed the same or not, shall be conclusive against both parties, without further appeal; and in like manner, shall be conclusive the decision of any such engineer, upon any question that may arise as to the meaning of this agreement, such question having been referred as aforesaid by the president and directors.

Within ten days after the return of any estimate to the president and directors, not less than four-fifths of the sum appearing to be due for work performed since the preceeding estimate, shall be paid, in the mode in which payments are made by the regulations of the company, the balance being reserved by the president and directors to ensure the fulfilment of this contract; no portion of which reserved money will under any circumstances be paid until this contract is fulfilled, and the work approved by the resident engineer. And within thirty days after the completion and approval of the aforesaid culvert according to the terms of this contract, the final estimate shall be made, and the balance due thereon shall be paid.

The works shall always be open to examination during their progress by the president and directors, their engineers, or any persons they may depute for that purpose; and the contractor shall at all times keep open, at his own expense, for that purpose, a horse path-way, through or along the side of his culvert, so that the officers of the company and their engineers may readily pass through the same to the section above or below.

At the expiration of every week's work, a report shall be made by the said contractors to the resident engineer, or to his assistant, upon the residency of which the said culvert is a part, of the average force of hands, carts, &c., employed on the same for the past week, according to such forms as may be supplied by order of the president and directors of the company.

It is mutually agreed between the parties, that the work on the aforesaid culvert shall be commenced within ten days from this date, and thereafter steadily prosecuted without intermission, with such force as shall in the opinion of the resident engineer secure its completion by the first day of August, 1833, at which time it shall be fully completed and delivered up; and it is further agreed that

in the event that the said work shall not be commenced, or prosecuted and completed, or, if the contractor on being required thereto by the resident engineer, shall fail or refuse to increase the force employed thereon, to such extent as in the opinion of the engineer, shall be necessary to ensure its completion in the stipulated time; or in case the contractor shall disobey any of the orders of the acting resident engineer for the time being, or shall violate any of the express conditions of this agreement, then on a certificate of the fact by any engineer of the company, the president of the Chesapeake and Ohio Canal Company may declare this contract abandoned, and the said canal company shall thereupon be exonerated from every obligation thence arising; and the reserved per centage on the contract price shall become the property of the canal company, to indemnify them for such breach of contract. And the president and directors, or the president of the said company, may thereafter let the said culvert or the unfinished work thereof, to any other contractor in the same manner as if this contract had never been made.

No contractor shall give or sell to the men employed by him, or suffer to be given or sold to them by others, if in his power to prevent it, any spirituous liquor; and if any contractor shall become notorious for bad temper, or shall be himself, subject to intoxication, or shall allow drunkenness, or disorder, or violence, among his hands, or any injury to be done by them, to the peace of the neighbouring country, or to any property or person in the vicinity of the canal; or, having in his service the authors of any such violence, shall not promptly dismiss them, when discovered; on such fact being proven, by the certificate of an engineer, or in any other satisfactory manner, to the president and directors, such contractor shall be, at their pleasure, discharged, and his contract considered abandoned, as in the case already mentioned.

This contract shall not be let, or assigned, either in whole or in part, to any other person, without the consent of the president and directors of the Chesapeake and Ohio Canal Company, nor will any account be kept by the president and directors with any sub-contractor; but should any part of the work be let to a sub-contractor either with the consent of the president and directors, or without, then the aforesaid Gilson, Noonan, Midler and Fresh, hereby assume and bind themselves to pay all just debts contracted by such sub-contractor, either for labour performed on the before mentioned culvert or for supplies furnished for it; and also to be responsible for all the acts, and negligence, of any such sub-contractor; and further, to be responsible to the owners of land, through which the section may pass, for all damages done to their property, by any persons employed upon the culvert.

No draft will be accepted by the president and directors from any contractor.

The superintending engineer shall have power to prescribe the manner of preparing for, beginning and conducting every species

of work to be done under this agreement, with reference to its purpose, and the durability of such work, and his instructions shall be promptly obeyed; and if he shall disapprove of the quality of any work, it shall be the duty of the contractor to take down at his own expense and rebuild so much thereof, as shall be disapproved of, and if the contractor shall neglect or refuse to take down and rebuild work so disapproved of, the engineer shall cause the same to be done at his cost.

And it is mutually agreed between the parties to this contract, that all the terms and conditions herein expressed, as well as the terms and conditions contained in the annexed specification and proposal which are deemed and taken to be a part of this contract, shall be binding upon the parties respectively, according to their true intent and meaning.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above mentioned.

C. F. MERCER, [L. S.]
President of the Chesapeake and Ohio Canal-Company, by order of the President and Directors in behalf of the Company.
RIAH GILSON. [L. S.]
JOHN NOONAN, [L. S.]
CHRISTOPHER MIDLER. [L. S.]
JAMES FRESH. [L. S.]

Witness.
WM. J. MCDONALD.

NOTE.—It is expressly declared by the president and directors, that no increase of the prices agreed upon in this contract, will be allowed under any circumstances whatever; nor will they consider any application that may be made for that purpose.

CULVERT No. 116.

Specification for Culverts on the Chesapeake and Ohio Canal.

The culverts below Harper's Ferry will be about one hundred and ten feet long, and those above that point about one hundred feet long; but the length will be varied according to circumstances.

The pits and foundations will be excavated of such width and depth as the superintending engineer may direct; and no foundation shall be built upon until he or the superintendent of masonry shall inspect and approve it.

When practicable the culverts will be founded on rock; when this cannot be done, the engineer may require the foundations of all the walls, as well as the span or water way, to be made firm by paveing the same with suitable stone, large and small, well ram-

med and driven, in which case, the first course of wall on such foundation shall be laid with large flags, on stone having broad beds, laid in header form, and bound at the ends. Or foundations of timber may by required by the engineer made in the following manner, viz: Timbers of suitable size, hewed on two sides, shall be laid one foot apart, and extending under the culvert and both of the side walls, three rows of shut piling, of plank two inches thick, shall extend entirely across the culvert and its walls, and to the depth of four feet below the bottom of the aforesaid timbers. These timbers shall be first puddled between and level with their upper surface; and their whole extent shall be floored over with a course of jointed two inch yellow pine plank, and each plank secured to the timber by at least six locust pins, eight inches long and one and a quarter inches square. On this foundation the walls of the culverts will be erected.

For all culverts of four feet span, the arch shall be fourteen inches thick; six feet span, sixteen inches; eight feet span, eighteen inches; twelve feet span, twenty-one inches; and sixteen feet span, twenty-four inches thick; the space for puddle over the arch generally two and a half feet deep. The arches shall be semi-circular or the segment of a circle as may be required. The shuting stones shall have good parallel beds, and fair joints dressed with the hammer, and of a proper length to form a good bond. They shall also be of an equal depth, and the extrados of the arch hammered off smooth.

The ring stones shall be well cut and shaped, so as to form joints radiating from a centre. Those for a culvert of four feet span shall be twelve inches deep; those for six feet span, sixteen inches; those for twelve feet span, eighteen inches, and those for sixteen feet span, twenty inches. They shall form a good bond with the arch, for which purpose, those for a four feet span must run alternately in the arch, from twelve to fifteen inches, and from twenty-four to thirty inches long. For any arch of greater size there must be alternately from fifteen to twenty inches, and from thirty to forty inches long. The ring-stones are to be rusticated one inch, which rustic is to project or be in relief one inch from the parapets and wings.

The abutments to be of such thickness as will be hereafter directed, to bear a proper proportion to their height of large stones well laid in rubble form, except the corners, which must be cut and coursed to conform with the ring-stone and rings.

The key-stones shall be well shaped, hard, and of durable quality, and shall be securely driven by a wooden mallet before the centres are removed.

The wing, walls and parapets to be hammered range work, to be well bedded and jointed stones, with a due proportion of heads; the whole to be surmounted with a well cut caping, eight inches thick, two feet wide, to project four inches over the face of the wall, unless a water table is preferred by the engineer. The whole work to be well laid in cement and gronted, with at least three bushels

of cement to the perch. When the case will permit the abutments to be at least two feet high.

When the culvert has been in other respects finished, the outer surface of the arch shall be plastered half an inch thick with cement morter.

The centres shall be constructed in such manner as the engineer may prescribe.

The cement used must be of the best quality which the upper country will afford, to be approved by the superintending engineer, and shall be transported from the mill to the works, and preserved there until used, in such manner as the engineer in writing shall direct. The sand must be clean and sharp, and if not found naturally combining these qualities, it must be washed. No materials shall be used until they are so approved.

The plan of the masonry and of its foundation shall be furnished each contractor, and if any explanations are necessary, they shall be given by the engineer or superintendant of masonry, at all times when required.

Any stone excavated from the culvert pit, if approved by the engineer, may be used in the construction of the culvert, but the surplus material excavated, shall be deposited at any place the engineer may direct within the distance of one hundred and twenty feet from the pit.

Where stone may be required for the construction of the culvert, and the contractor cannot agree with the owner thereof for the same on reasonable terms, the president and directors will upon application, cause the same to be condemned according to the charter of the company, the contractor paying the expense of the condemnation, as well as the sum awarded by the jury for the stone.

Proposal.

We propose to furnish all the necessary materials, and to construct culvert No. 116 of 40 feet span, in section No. 150, of the Chesapeake and Ohio Canal; and to do the necessary excavation, puddling and foundation, in conformity to the foregoing specification for the following prices:

For the masonry of every description, except the paveing, including all materials, at per perch of 25 cubic feet -	$4 00
For paving per superficial yard square - - -	30
For the timbers used in the foundation, including workmanship and the puddling about the foundation, per cubic feet - - - - - - -	20
For the plank used in the foundation, including shut piling, workmanship, &c., per thousand feet, board measure - - - - - - - -	18 00

For Excavating the Culvert Pit.

Rock quarried or blasted, per cubic yard - - - 50
All other materials per cubic yard, - - - 25

The above prices includes all pumping or bailing of water, coffer dams, centres, &c.

Signed this 23d day of August, 1832.

RIAH GILSON,
JOHN NOONAN,
CHRISTOPHER MIDLER,
JAMES FRESH.

No partner will be admitted into the contract whose name does not appear on this proposal.

No spiritous liquors will be allowed to be used on the work.

Final Estimate marked B. referred to in Exceptions at page 17.

Final Estimate.

First Division, Fourth Residency of the Chesapeake and Ohio Canal, Culvert No. 116, Section No. 150.

DECEMBER 24*th*, 183 .

Gilson, Midler & Co. Contractors.

541 perches of masonry,	$4 00 - - -		$2,164 00
100 square yards of paving,	30 - - -		30 00
1,326 cubic yards excavation,	25 - - -		331 50
25 cubic yards rock,	50 - - -		12 50
Amount - - -			2,538 00
Deduct former estimate - -			1,664 00
			874 00
Add hitherto retained - - -			477 70
			1,351 70
Off cement - - - -			410 13
			$941 57

Statement.

Total final estimate - -		$2,538 00
Payments hitherto	1,186 30	
Cement - -	410 13	
		1,596 43
		$941 57

The above work is done in culvert No. 116, section No. 150, and the prices annexed are those which by the terms of the contract properly apply.

JOHN A. BYERS,
Assistant Engineer.
THOS. F. PURCELL,
Resident Engineer.

To the PRESIDENT and DIRECTORS
Of the Chesapeake and Ohio Canal Company.

CANAL OFFICE, WASHINGTON, *January* 3, 1834.

Examined. Passed by order.

JOHN P. INGLE,
Clerk Ches. and Ohio Canal Company.

To the TREASURER.

Contract dated 30th November, 1832, referred to in Plaintiff's first Exception, page 17.

Articles of agreement made and entered into this thirteenth day of November, A. D. 1832, by and between William H. Fresh, of the State of Maryland, of the one part, and Riah Gilson, superintendent for Gilson & Co., contractors, of the said State, of the other part, witnesseth: That the party for the first part, for the consideration hereafter mentioned, doth covenant, promise, and agree to and with the party of the second part, to excavate and remove all earth or *other* other substances from pit, to find every necessary material and tools, to quarry, dress, and set, and to do all extra work according to his best art and skill, and to complete it in an workmanlike manner, at his own just and proper expense, culvert No. 116, on the 150th section of the Chesapeake and Ohio Canal. He agrees to be diligent and urgent with his work, so that it may progress in accordance with the specification and directions of the engineers. And in the event of neglect of the work, or of instructions, the party of the first part fully empowers and authorizes Riah Gilson to declare the work abandoned, to assume the direction, and complete it at the said first party's expense.

The party of the first part further agrees to pay, or cause to be paid to the party of the second part, the sum of one hundred dollars. In consideration whereof, Riah Gilson, of the second part, doth covenant and promise to pay, or cause to be paid unto the party of the first part, upon receiving certificate of approval of work and measurement of excavations, stone, and extra work in the aforesaid pit and culvert, eighteen cents for each and every cubic yard of excavation, and for mason and extra work the contract price and estimate allowed to Gilson & Co. from the company. And doth agree to pay a proportion of cash on each estimate made by the canal company monthly or otherwise. And for the

true and faithful performance of all and singular the agreements aforesaid, each of the parties binds himself one unto the other in the penal sum of one hundred dollars.

In witness whereof, we have hereunto set our hands and seals, at Blackford's Ferry, on the day and and year first above written.

WM. H. FRESH, [L. S.]
RIAH GILSON, [L. S.]

Witnesses present to signing,
JNO. VAN BUSKIRK,
WM. A. WELLS.

Barrett's Contract.

Contract with Barrett, referred to in Plaintiff's first Bill of Exceptions, page 18.

Articles of agreement made and concluded this second day of May, 1833, between Elijah Barrett, of Washington county, State of Maryland, of the first part, and Wm. H. Fresh, of the same county and State, of the second part. Whereas the aforesaid Elijah Barrett hath agreed, for and in consideration of the payments hereinafter mentioned, to build and complete in a workmanlike manner a certain culvert on the Chesapeake and Ohio Canal, which is designated as culvert No. 116, on section No. 150, as recently laid out by the Chesapeake and Ohio Canal Company, and which culvert thus contracted for, to be built by the party of the first part at his own just labor and expense, and agreeable to the specifications and directions of the engineers. All work which may not be approved of by the engineers or superintendent of masonry the party of the first part to be responsible for the same. The first party to cut and hammer, dress all stone requiring cutting or dressing for said culvert, and to complete the same by the fourth day of July, 1833, the said first party binding himself in the penal sum of fifty dollars in case of non-compliance with all the above agreements.

The party of the second part binding himself to deliver the materials for building within fifty feet of said culvert, and to pay to the party of the first part a proportion of cash monthly or otherwise, and on receiving a certificate of the engineer or superintendent of masonry of measurement and approval of work, to pay one dollar twelve and a half cents for each and every perch of twenty-five cubic feet.

In witness whereof, we set our hands and seals the day and year first above written.

ELIJAH BARRETT, [L. S.]
WILLIAM H. FRESH, [L. S.]

Witness,
LORENZO AMBROSE.

It is understood and agreed that the party of the second part is to furnish the materials as fast as they are necessarily wanton.

Letter from Plaintiff to Defendant's Agent.

Letter from Plaintiff to Defendant's Agent, dated 25th December, 1833, referred to in Plaintiff's first Bill of Exceptions, page 19.

SHARPSBURG, *25th December*, 1833.

Mr. WM. WELLS.

DEAR SIR: I wish you to be so good as to get a bill of Mr. Reynolds of what cement I had in the order of 1,000 bushels which is charged to me on the books of Gilson & Co. I wish you also to send me a bill of my book account to Washington city. Have it arranged so I may settle with Mr. Gibson there without any further trouble. (Direct the letter to Mr. Gibson.) I wish you to inform Mr. Gibson and Mr. Midler that I will not admit of any more charges already made on Mr. Barrit's order, which may cause me much trouble. I have called on Mr. Barritt for to settle, but he is not disposed to settle. I cannot wait on him longer. You must not pay him any more on my account until he comes forward and settles with me, as I will not admit the charge. If there is any thing coming to Mr. Barritt on mine and his settlement, I will give him an order on Mr. Gibson & Co. or Mr. Midler, for the amount which may be coming to him, as Mr. Midler has been speaking to me on the subject. By attending strictly to the above, you will much oblige your

obedient servant,

WM. H. FRESH.

Mr. WM. WELLS.

Exhibit C, referred to in Plaintiff's first and fifth Bill of Exceptions, pages 19 *and* 22.

Mr. Wm. H. Frseh to Gilson & Co. Dr.

1832.			
Dec. 5,	To cash - - - - -		$15 00
Dec. 12,	" " - - - - -		150 00
1833.			
Jan. 12,	" " - - - - -		42 00
Feb. 11,	Do do balance on estimate, 18 50		
	Do do on loan - - 30 00	-	48 50
Mar. 14,	Do do - - - - -		45 00
May 13,	Do order for 1000 bushels cement, 21	-	210 00
July 12,	Do Reynold's bill transporting cement	-	42 50
27,	Do cash - - - - -		120 00
Aug. 5,	Do your note paid by C. Medler -	-	14 50
10,	Do cash - - - - -		5 00
Sept. 5,	Do team 3 1-2 days, $3 - - -		16 50
	Do 25 bushs. cement, 24, hauling, 8 00 -		24 50

14,	Do paid for whiskey for Barrett, 1	-		13 43
	Do cash to E. Barrett -	-	-	75 00
	Do 5 bushs. cement, 24 and hauling $4	16 00		104 43
19,	Do paid L. Ambrose -	-	-	10 00
	Do Barrett's order paid Moore	-	-	17 00
	Do do do do Harley, 20 00		-	47 00
21,	Do 75 bushs. cement, 24 -	-	-	18 00
	Do hauling same -	-	-	9 00
	Do team 1 1-2 days, $3, 4 50	-	-	28 50
28,	Do 25 bushs. cement, 27	-	-	6 75
	Do 3 cts on 150 bushs. cement			4 50
	Do Hauling cement -	-	-	2 00
	Do 2 1-2 days services of hands, 7 50		-	20 75
Oct. 1,	Do paid Barrett's order to Green			7 72
1833.				
Oct. 12,	Cash paid to Barrett -	-	-	26 00
17,	Do 20 bushs. cement, 27 -	-	-	5 40
	Do hauling do -	-	-	2 00
	Do 3 1-2 days teams and hand, 10 50		-	17 90
20,	Do paid Barrett's order to Shepherd		-	30 50
	Do amount bro't over -	-	-	1,114 80
26,	Do paid Barrett -	-	-	9 00
29,	Do do do -	-	-	25 00
Nov. 6,	Do do do order -	-	-	3 00
9,	Do 25 bushs. cement, Nov. 2	-	-	5 25
	Do hauling same -	-	-	3 00
	Do 25 bushs. cement, Nov. 6	-	-	5 25
	Do hauling same -	-	-	3 00
	Do 25 bushs. cement, Nov. 9	-	-	5 25
	Do hauling same and lost time	-	-	10 50
	Do team 4 days, Nov. 2 -	-	-	12 00
	Do do 2 do 9 -	-	-	6 00
	Do 6 lb. powder to Barrett	-	-	2 25
	Do cash Barrett's order -	-	-	9 23
	Do do do to Jas. Glass 5 00	-	-	66 73
16,	Do 25 bushs. cement 11th inst. 27		-	6 75
	Do 20 do do 13th do 27		-	5 40
	Do 2 3-4 days service team 6 75	-	-	18 90
	2 & 3 do 18 bushs. cement 21	-	-	3 78
	Do 1 day team -	-	-	3 00
	Do paid Barretts order 15 50	-	-	22 28
	26 do do Brown on do -	-	-	5 00
Dec. 12,	Do order on Robinson & Co.	-	-	20 00
	Do paid Leidman -	-	-	22 81
	Do do E. Kelly -	-	-	24 94
	do do Glass -	-	-	4 25
	Do do same 6 00 -	-	-	78 00
21,	Do do Riley -	-	-	10 00

	Do 5 bushs. cement - - -		1 35
	Do hauling same - - - -		3 00
Dec. 21,	Do do 15 bushels of cement - -		4 05
	Do do hauling same - - -		3 00
	1 1-2 days stone-cutter, 1 75 - -		2 62
	Do 1-2 do mason, 1 75 - - -		2 63
		26 : 65	$1,369 36

Vouchers No. 1.

Mr. W. H. Fresh to J. W. Reynolds Dr.

June 1,	To freighting 300 bushs. cement 8 1-2 -		$25 50
5,	To freighting 200 bushs. cement - -		17 00
			$42 50

No. 2.

Received Sharpsburg, July 27th, 1833, of Gilson & Co. one hundred and twenty dollars, on account of culvert 116, Chesapeake and Ohio Canal.

$120. WM. H. FRESH.

No. 3.

JULY the 19th, 1833.

I assign my right, title, interest, and claim on the within note to Christopher Midler, without recovery on me of for any part thereof being paid for value received.

JOHN McMULLEN.

$14 50. SHARPSBURG, 18th *July*, 1833.

Ten days after date, I promise to pay John *N.* Mullen, or order, fourteen dollars fifty cents for value received.

WM. H. FRESH, [L. S.]

No. 4.

APRIL 3d, 1833.

Gilson & Co. to C. Midler Dr.

	6th,	To cash paid for one axe for Hayward - -			$1 50
July	20th,	To cash paid for appeel bond, lawpbls case -			25
	23d,	Do do for garden-bower for straw -			1 69
Aug.	7th,	Do do Alonzo Fairchilds - -			5 00
	7th,	Do do Gideon Gunton - - -			2 00
	8th,	Do do for 25 bundles of straw - -			1 56
	"	Do do for feed at mill - - -			2 50

10th, Do	do	Arthur Donalson -	-	0 50
10th, Do	do	paid John Wheeler	-	0 50
" Do	do	do John Collins	-	5 00
" Do	do	do Edward Carey	-	4 75
" Do	do	do Augustus Seanes	-	0 25

AUGUST 11.

Gilson & Co. Dr. to C. Midler for board.

Josiah Hatherly to 18 days board				-	-	-	5 14
Wm. Benjamin	do	do	do	-	-	-	5 14
John Nickell	do	do	do	-	-	-	5 14
Andrew Kelly	do	do	do	-	-	-	5 14
Frederick Shiefer	do	do	do	-	-	-	5 14
Thomas T. Bishop	do	do	do	-	-	-	5 14
Jesse Savane	do	do	do	-	-	-	5 14
Robert Rhead	do	do	do	-	-	-	5 14
To cash -	do	do	do	-	-	-	1 00
Cred. James Cherry former charge					-	-	67 62
To cash paid Wm. Fresh					-	-	5 00
10th, To paid James Anders on account						-	72 62
							3 25
							$75 87

No. 5.

Received August 16, 1833, of Gilson & Co., one hundred and fifteen dollars on account of culvert 116, Chesapeake and Ohio Canal.

$115. WM. H. FRESH.

No. 6. *August 28th*, 1833.

Elijah Barrett, to Gilson & Co. Dr.

28th, to team and teamster 5 1-2 days at $3 per day -	$16 50
Sept, 5, to 24 bushels of cement at 28 cts, per bushel -	5 52
To hauling the same - - - - -	2 00
	$24 02

Wade & Snider, to Gilson & Co. Dr.

Sept. to 104 bushels of cement from August.

No. 7. *September 14th*, 1833.

Wade & Snyder, to Gilson & Co. Dr.

Ent. to 60 bushels of cement,

Elijah Barrett,

Charge to 50 bushels cement

Charge to hauling the same - - - - $4 00

No. 8.

Received, September 18, 1833, of Gilson & Co., ten dollars on account of culvert 116, and to be applied to the use of that work.

for WILLIAM H. FRESH,
L. AMBROSE.

No. 9. *September* 17*th*, 1833.

Mr. Gilson and Midlar, you will please pay James Moore seventeen dollars, for hauling and mason work on culvert No. 116.

ELIJAH BARRETT.

No. 10. *September* 18*th*, 1833.

Mr. Gilson and Midlar, please pay William Hawley twenty dollars for work done on culvert No. 116.

ELIJAH BARRETT.

No. 11. *September* 19*th*.

Elijah Barrett, to Gilson & Co. Dr.

To 75 bushels of cement - - - - -	$
To hauling the same - - - - -	6 00
21st, to team and teamster 1 1-2 days - - -	4 50
	$10 50

No. 12. Wm. Fresh, Dr.

Sept 23d, to twenty-five bushels of cement,	
To hauling the same - - - - -	$2 00
26th, to two and a half days team - - -	7 50
	$9 50

No. 13.

Gilson and Midlar, will please pay Daniel Grim seven dollars seventy-two cents, and oblige yours.

September 30th, 1833. ELIJAH BARRETT.

No. 14. *October* 12*th*, 1833.

Wm. Fresh, to Gilson & Co. Dr.

To twenty bushels of cement	
To hauling the same - - - - -	$ 2 00

Elijah Barrett, Dr.

To team and hand three and a half days - -	10 50

No. 15. *October* 22*d*, 1833.

Mr. Gilson and Midler, please pay William Gass thirty dollars and fifty cents, for cutting stone and building at culvert No. 116.

ELIJAH BARRETT.

No. 16. *November 5th*, 1833.

Mr. Gilson and Midler, please pay John Downey three dollars, for work done on culvert No. 116.

ELIJAH BARRETT.

No. 17.

Delivered November 2d, 1833, to George Lemon, twenty-five bushels of cement, for Gilson & Co., on account of the Chesapeake and Ohio Canal Company.
25 bushels.

For BOTELER AND REYNOLDS,
ROBERT ROBERTS.

No. 18.

Delivered November 6th, 1833, to George Lemon twenty-five bushels of cement, for Gilson & Co., on account of the Chesapeake and Ohio Canal Company.
25 bushels.

For BOTELER AND REYNOLDS,
ROBERT ROBERTS.

No. 19.

Delivered November 9th, 1833, to George Lemon twenty-five bushels cement, for Gilson & Co., on a ccount of the Chesapeake and Ohio Canal Company.
25 bushels.

For BOTELER AND REYNOLDS,
JOHN ROULLETE.

No. 20.

Teamster time from October 10th, until November 3d, 1833, by month. Frederick Shafer 22 days.
Returned by bill do Wm Benjamin 22 days,
George Lemon 6 days, by the day

Ent. ANTETIM, *October* 31*st*, 1833.

Gamson & Hays, to Gilson & Co. Dr.

To team and teamster one day - - - -	$3 00

Wm. Fresh, Dr.

Nov. 3d, to hauling cement - - - -	$3 00
Ent. 6th, to hauling cts - - - - -	3 00
9th, to hauling cement three days, 3 1-2 - - -	10 50
	$16 50

Elijah Barret, Dr.

Nov. 2d, to team and teamster four days - - -	$12 00
Ent. 9th, to team and teamster two days - - -	6 00
	$18 00

Elijah Barret, Dr.

Ent. To barrel of powder at 37 1-2 cts. per pound - $2 25

No. 21. *November 8th*, 1833.

Mr. Gilson and Midlar, please pay Hugh Doherty the sum of nine dollars and twenty-three cents, for work done on culvert No. 116.

ELIJAH BARRET.

$9 23 3-4, board deducted out, $3 45.

No. 22.

Gilson & Co. to C. Midler, Dr.

Nov. 6th, 1833,	to cash paid Benhart Martin - -		$5 00
Nov. 6th, 1833,	to cash paid Peter Burke - -		5 00
9th,	to cash paid William Flood - -		1 25
9th,	Robert Rhead, to one week's board -		2 00
9th,	Benhart Martin, do. - -		2 00
9th,	Joseph Poohs, do. - -		1 50
9th,	William Benjamin, do. - -		2 00
Nov. 2, 3, 4,	John Doyle, do. - -		2 00
9, 7, 11, 10, 25,	Alexander Ross, do. - -		2 00
Chd. McDougall,	David Gordon, do. - -		2 00
	Bruce McDougall, 2 days - -		0 56
	William Lemon, do. - -		0 56
To cash paid Elijah Barrett or order		- -	9 23
To cash paid James Glass, for E. Barrett		- -	5 00
Oct. 29, for horse feed - - -		- -	2 56
Oct. 29, cash paid Joseph Poohs -		- -	2 25
			$44 91
Nov. 9th, to hire of one team six days -		- -	18 00
to hire of one team five days		- -	15 00
			$77 91

Teams credited in ledger.

W. A. WELLS.

No. 23.

Delivered, November 11th, 1833, to George Lemon, twenty-five bushels cement, for Gilson & Co., on account of the Chesapeake and Ohio Canal Company.

For BOTELER & REYNOLDS,
JOHN ROULLETE.

25 bushels.

This cement taken to culvert No. 116.

No. 23 and 24.

Wm. Fresh, to Gilson & Co. Dr.

Nov. 16th. To team and teamster, two and a quarter days - - - - - $6 75

No. 24.

Delivered, Nov. 13th, 1833, to George Lemon, twenty bushels cement, for Gilson & Co., on account of the Chesapeake and Ohio Canal Company. For BOTELER & REYNOLDS,
JOHN ROULETTE.

20 bushels.

This cement taken to culvert No. 116.

No. 25.

Delivered, Nov. 21st, 1833, to George Lemon, eighteen bushels of cement, for Gilson & Co., on account of Chesapeake and Ohio Canal Company. For BOTELER & REYNOLDS,
ROBERT ROBERTS.

18 bushels.

No. 26. Wm. Fresh, to Gilson & Co. Dr.

1833, Nov. 21st.

To team and teamster, one day, hauling cement - $3 00

No. 27. *November* 18*th*, 1833.

Mr. Gilson and Medler, please pay James Welch for fifteen days and a half work done on culvert No. 116; deduct ten dollars for board and drink. ELIJAH BARRETT.

Received within the balance of the in full, this 19th day of November, 1833, of Christopher Medler, by me,
JAMES WALSH.

No. 28. ANTETAM, *November the* 20*th*, 1833.

Received of Gilson & Co., for labor done on culvert one hundred and sixteen, twenty dollars, by an order on Robinson & Co.
Rec'd by me, for W. H. FRURSH,

$20 00. L. AMBROSE.

No. 29. *December* 5*th*, 1833.

Mr. Gilson and Medler, please pay Martin Gwanm the sum of twenty-two dollars eighty one and a half cents, in full, for work done on culvert No. 116.

ELIJAH BARRETT.

Received of Christopher Medler the within order, in full. December 10, 1833. $22 81.

$22 81. MARTIN GWANNM.

Witness: JOHN RODWARD.

December 5th, 1833.

Mr. Gilson and Medler, please pay Edward Kelley twenty-four dollars and ninety-three cents, for work done on culvert No. 116.

ELIJAH BARRETT.

Received of Christoper Medler his order in full of the within account. December 10, 1833.

$24 93.

his
EDWARD x KELLEY.
mark.

Witness: JOHN RODEARAM.

No. 31.

Mr. R. Gilson and Medler, please pay Hugh Riley four dollars and twenty-five cents, for James Glass, for work done on culvert 116, and this shall be my receipt for him in full.

JAMES GLASS.
ELIJAH BARRETT.

Received of Christopher Medler, four dollars and twenty-five cents, in full of the within account. December 10, 1833.

$4 25.

HUGH RILEY.

Witness: JOHN RODEARNA.

No. 32. *December 6th*, 1833.

Mr. Gilson and Medler, please pay John Lain six dollars, for work done on culvert No. 116.

ELIJAH BARRETT.

No. 33. Gilson & Co, to C. Midler, Dr.

December, 1833.

To cash paid Mrs. Treeny at McGars - - -	$1 43
To cash paid Peter Rider - - - -	2 00
To cash paid John Waddle - - - -	13 92
To cash paid Hugh Ryley on E. Barrett's order - -	10 00
To Robert Reed to one weeks board - - -	2 00
To Benhart Martin, do. do. - - -	2 00
To John Law, do. do. - - -	2 00
To Joseph Pooks, do. do. - -	1 50
To George Lemon to four days - - -	1 43
	$36 28
To hire of team eight and a half days - - -	25 50
Teams Cr. in ledger - - - - -	$61 78

No. 34. William Fresh, to Gilson & Co. Dr.

1833, December 19. To fifteen bushels of cement from aqct.

To team and teamster one day -	$3 00
To five bushels of cement from agit.	
To team and teamster one day -	3 00
	$6 00

To one stone-cutter 1 1-2 days
To one mason 1 1-2 days

Vouchers from 1 *to* 7 *referred to at page* 19.

Vouchers from 1 to 7 referred to by William A. Wells, as paid by him April 29th, 1835.

Voucher No. 1. October 19th, 1833.

Mr. R. Gilson and Midler please to pay William Harris, the sum of twenty-nine dollars and forty-three cents, for work and board done on culvert No. 116.

$29 43. (Endorsed) ELIJAH BARRETT.

Received payment in full, April 29, 1835.
WILLIAM HARRIS.

Voucher No. 2. December 5th, 1833.

Mr. Gilson and Midler please pay to William Harris, seventeen dollars and eighty-two cents for boarding on culvert No. 116.

$17 82. EDWARD KELLY.
ELIJAH BARRETT.

Received payment in full, April 29th, 1835.
WILLIAM HARRIS.

Voucher No. 3. December 5th, 1833.

Mr. Gilson and Midler please pay William Harris fifteen dollars for boarding at culvert No. 116.

$15. MARTIN RESAMOND,
ELIJAH BARRETT.

Received payment in full, April 29th, 1835.
WILLIAM HARRIS.

Voucher No. 4. November 18th, 1833.

Mr. R. Gilson and Midler please to pay William Harris the sum of ten dollars for board and work done on culvert No. 116.

$10. By JAMES WELSH,
ELIJAH BARRETT.

Received payment in full, 29th April, 1835.
WILLIAM HARRIS.

Voucher No. 5. November 21st, 1833.

Mr. R. Gilson and Midler please to pay William Harris, five dollars and fifty cents for work and board done on culvert No. 116.

$5 50. By HUGH RILEY,
ELIJAH BARRETT.

Received payment in full, 29th April, 1835.
WILLIAM HARRIS.

Voucher No. 6. November the 21st, 1833.

Mr. Riah Gilson and Midler please pay William Harris twelve dollars and fifty cents for board and work done on culvert No. 116.

$12 50. By JAMES GLASS,
ELIJAH BARRETT.

Received payment in full, April 29th, 1835.
WILLIAM HARRIS.

Voucher No. 7. 1833.

Gilson and Midler, & Co. doing business under the firm of Gilson & Co.

To boarding hands on culvert No. 116, on the Chesapeake and Ohio Canal

To boarding Hugh Dougherty 9 days and sundries -	$3 45
To boarding John Downey 7 days - - -	2 00
	$5 45

1835, April 20th, received payment in full.
WM. HARRIS.

Due bills &c. referred to at page 20.

Due bills and orders referred to in exceptions in paper marked J. H. B. and R. J. B.

No. 1. December 11th, 1833.

Due Mikle Ebbert on settlement sixty dollars.
ELIJAH BARRETT.

No. 2.

Some writing not legible, purporting to be a receipt for $12, due Hays, for work on culvert 116.

No. 3. November 25th, 1833.

Mr. Gilson & Midler pay John Brown twenty-four dollars for work done on culvert No. 116.
ELIJAH BARRETT.

Mr. William Wells pay John Brown the within order.
C. MIDLER, *for Co.*

Five dollars has been paid on the within order.
WM. WELLS.

November 26th, 1833.

No. 4. December th, 1833.

Due Philip S. Hays forty dollars and forty-three cents.
$40 43. ELIJAH BARRETT.

No. 5. November 25th, 1833.

Mr. Gilson and Midler please pay Francis Ursin, twenty days and a half work done on culvert No. 116, at one dollar per day.
ELIJAH BARRETT.

Board seven dollars and 14 cents unpaid.

Mr. William Wells pay the bearer Francis Ursin, thirteen dollars and 36 cents. We are accountable for board charged us at $7 14.
C. MIDLER, *for Co.*

No. 6. September 2d, 1833.

Settled up in full with Mikle Ebert, due him one hundred dollars and fifty-seven cents.
ELIJAH BARRETT.

No. 7. December 25th, 1833.

Gilson and Midler please pay Mikle Ebbert twenty dollars for mason's work done on culvert No. 116.
ELIJAH BARRETT.

Test: W. BRENT, *Clk.*

Return to Writ of Error—Clerk's Certificate.

And whereas, afterwards to wit, on the 11th day of October, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiff, by his attorney aforesaid, produced and filed in court here, the United States writ for the correcting of errors of, and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and effect of the law, in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of the said court, at the city of Washington, this 25th day of January, A. D. 1840.

W. BRENT, *Clerk.*